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# HOUSE BILL No. 1101

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2-100.5; IC 14-28-1.

**Synopsis:** Flood control. Requires the natural resources commission to direct the department of natural resources to prepare a statewide flood risk and flood damage assessment. Places a limit on the maximum amount of fill material that may be placed in a floodway, subject to certain exceptions. Makes violation of the limit a Class B infraction. Specifies the standards of review for an application for a permit for certain obstructing activities in a floodway. Allows summary denial of a permit application in certain circumstances. Prohibits a person from placing certain materials in a floodway as fill or for bank stabilization. Places restrictions on the use of flood conveyance channels.

**Effective:** July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Natural Resources.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1101

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 14-8-2-100.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2007]: **Sec. 100.5. "Flood water conveyance**  
4 **channel", for purposes of IC 14-28-1, has the meaning set forth in**  
5 **IC 14-28-1-3.1.**

6       SECTION 2. IC 14-28-1-3.1 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2007]: **Sec. 3.1. As used in this chapter, "flood water conveyance**  
9 **channel" means:**

10       **(1) a manmade excavation that:**

11       **(A) is designed to:**

12       **(i) transport flood waters; and**

13       **(ii) offset the effects of fill or construction in the**  
14 **floodway; and**

15       **(B) is separate from the waterway's existing channel except**  
16 **for the upstream and downstream intersections of the**  
17 **excavated channel and the waterway's existing channel; or**

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**(2) a manmade excavation that:**

**(A) is designed to offset the effects of fill or construction in the floodway;**

**(B) alters the:**

**(i) bottom width;**

**(ii) depth; or**

**(iii) side slopes;**

**of the waterway's existing channel; and**

**(C) results in an increase in the total cross-sectional area available to transport flood waters.**

SECTION 3. IC 14-28-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. The commission has jurisdiction over the public and private waters in Indiana and the adjacent land necessary for flood control purposes or for the prevention of flood damage. The commission shall do the following:

(1) Make a comprehensive study and investigation of all pertinent conditions of the areas in Indiana affected by floods **by directing the department to prepare a statewide flood risk and flood damage assessment that:**

**(A) quantifies annual flood damage in Indiana, including:**

**(i) flood insurance claims and payments;**

**(ii) liability of state and local government for flood damage; and**

**(iii) other costs;**

**(B) identifies properties that are most at risk from flood damage;**

**(C) assesses:**

**(i) statewide trends in flood flows and flood storage capacity; and**

**(ii) the factors affecting those trends; and**

**(D) assesses environmental conditions along Indiana floodways.**

(2) Determine the best method and manner of establishing flood control, giving consideration to the following:

(A) The reservoir method.

(B) The channel improvement method.

(C) The levee method.

(D) The flood plain regulation method.

(E) Any other practical method.

(3) Adopt and establish a comprehensive plan or master plan for flood control for all areas of Indiana subject to floods.

(4) Determine the best and most practical method and manner of

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1 establishing and constructing the necessary flood control works.  
 2 (5) Adopt appropriate measures for the prevention of flood  
 3 damage.

4 SECTION 4. IC 14-28-1-20 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 20. (a) A person may  
 6 not do any of the following:

7 (1) Erect in or on any floodway a permanent structure for use as  
 8 an abode or a place of residence, except as authorized under  
 9 sections 24, 25, and 26.5 of this chapter.

10 (2) Except as authorized under section 26.5 of this chapter, erect,  
 11 make, use, or maintain in or on any floodway, or suffer or permit  
 12 the erection, making, use, or maintenance in or on any floodway,  
 13 a structure, an obstruction, a deposit, or an excavation that will do  
 14 any of the following:

15 (A) Adversely affect the efficiency of or unduly restrict the  
 16 capacity of the floodway.

17 (B) By virtue of the nature, design, method of construction,  
 18 state of maintenance, or physical condition do any of the  
 19 following:

20 (i) Constitute an unreasonable hazard to the safety of life or  
 21 property.

22 (ii) Result in unreasonably detrimental effects upon the fish,  
 23 wildlife, or botanical resources.

24 (3) Reconstruct or allow or permit the reconstruction of an abode  
 25 or a residence located in a floodway, except as authorized under  
 26 sections 24, 25, and 26.5 of this chapter.

27 **(4) Except as permitted in subsection (b), place fill material in**  
 28 **a floodway in excess of the amount that causes a**  
 29 **one-hundredth (0.01) of a foot increase in the level of the**  
 30 **regulatory flood (as defined in 312 IAC 10-2-35, as in effect**  
 31 **January 1, 2007).**

32 **(b) Fill material may be placed in a floodway as part of a public**  
 33 **bridge crossing, an access road for a water dependent activity, or**  
 34 **a small dam, unless the fill material will do any of the following:**

35 **(1) Adversely affect the efficiency of or unduly restrict the**  
 36 **capacity of the floodway.**

37 **(2) As a result of the nature, design, method of construction,**  
 38 **state of maintenance, or physical condition of the crossing,**  
 39 **road, or dam, do any of the following:**

40 **(A) Constitute an unreasonable hazard to the safety of life**  
 41 **or property.**

42 **(B) Result in unreasonably detrimental effects upon fish,**

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**wildlife, or botanical resources.**

SECTION 5. IC 14-28-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of two hundred dollars (\$200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the

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work before beginning construction. The director shall issue a permit only if:

**(1) the director considers:**

**(A) the overall impact on the floodway that has resulted or could result from all minor and major actions that any person:**

**(i) has taken;**

**(ii) is taking; or**

**(iii) can reasonably be expected to take;**

**that had an effect or will potentially have an effect described in subdivision (2)(A) through (2)(C); and**

**(B) that significant impacts can result from individually minor but collectively significant actions that occur over time; and**

**(2) in the opinion of the director, after taking into account the considerations in subdivision (1), the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:**

**(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.**

**(2) Constitute an unreasonable hazard to the safety of life or property.**

**(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.**

**(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.**

**(g) A permit issued under this section:**

**(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and**

**(2) to:**

**(A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or**

**(B) an electric utility for the construction of a power generating facility;**

**is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.**

**(h) The director shall send a copy of each permit issued under this**

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section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(i) The permit holder shall post and maintain a permit issued under this section at the authorized site.

(j) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

- (1) inspected; and
- (2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

**(k) An applicant may not file a third application for a permit for a project under subsection (c) if the director has denied two (2) applications by the applicant for the project for any of the following reasons:**

- (1) The permit application was incomplete.**
- (2) The permit application contained modeling demonstrating an unacceptable surcharge.**

**The department shall adopt rules under IC 4-22-2 to implement this subsection.**

**(l) The director may deny an application for a permit under subsection (e) without further review if the director denied a permit application for essentially the same project because the proposal did not meet the requirements of subsection (e).**

SECTION 6. IC 14-28-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) Except as provided in subsection (b), this section does not apply to the following:

- (1) A person using chemicals in a normal manner in the production of agricultural products.
- (2) A person acting in accordance with an appropriate permit issued by the director.
- (3) A person acting in accordance with a permit issued by the department of environmental management under water pollution control laws (as defined in IC 13-11-2-261) or environmental management laws (as defined in IC 13-11-2-71).

(b) This section applies to the permitting requirements set forth in the following:

- (1) Section 22 of this chapter.
- (2) IC 14-26-2.

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(c) A person may not put, throw, dump, or leave a contaminant, garbage, or solid waste:

- (1) in, upon, or within fifteen (15) feet of a lake; or
- (2) in or upon a floodway.

**(d) A person may not place in a floodway as fill or for bank stabilization any of the following:**

- (1) Contaminants.**
- (2) Solid waste.**
- (3) Garbage.**
- (4) Other used or waste materials, including the following:**
  - (A) Coal combustion wastes or byproducts.**
  - (B) Concrete.**
  - (C) Asphalt.**
  - (D) Foundry sand.**
  - (E) Automobiles.**
  - (F) Automobile bodies or parts.**
  - (G) Tires.**
  - (H) Steel slag.**
  - (I) Metal parts.**
  - (J) White goods (as defined in IC 13-11-2-266).**

SECTION 7. IC 14-28-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) All works of any nature for flood control in Indiana that are established and constructed shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout Indiana. A:

- (1) person may not construct or install any works of any nature for flood control; and
- (2) court may not enter the final order or judgment establishing or ordering works constructed;

unless the proposed works and the plans and specifications are approved by the commission.

(b) The interested parties must file a verified written application with the commission. The commission shall consider all the pertinent facts relating to the proposed works that will affect flood control in Indiana and shall determine whether the proposed works in the plans and specifications will:

- (1) be in aid of and acceptable as part of; or
- (2) adversely affect and interfere with;

flood control in Indiana.

(c) The commission shall enter an order approving or disapproving the application, plans, and specifications. If the commission

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disapproves the application, the order must set forth the objectionable features so that the proposed works and plans and specifications may be corrected or adjusted to obtain the approval of the commission.

**(d) Except as provided in subsection (e), flood conveyance channels or other structural alterations may not offset the effects of:**

**(1) obstructions; or**

**(2) fill;**

**in floodways.**

**(e) Subsection (d) does not apply to publicly constructed and owned flood control projects providing benefits to the general public if all other requirements of this chapter have been met.**

SECTION 8. IC 14-28-1-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. (a) A person who knowingly violates section ~~20(2)~~, ~~20(3)~~, **20(a)(2)**, **20(a)(3)**, **20(a)(4)**, or 29 of this chapter commits a Class B infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.

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